



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Social Work, Department of Health Professions
VAC Chapter Number:	18 VAC 140-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Social Work
Action Title:	Periodic Review
Date:	August 5, 2003

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

Amendments to regulation are proposed as a result of the board's review of regulations pursuant to Executive Order 25. The board proposes to amend its regulations regarding dual relationships and specify a time of two years post termination of the therapeutic relationship with the burden of proof on the clinician.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

The following changes were made to the proposed regulation:

18 VAC 140-20-150. Professional Conduct

After a discussion of written comment which was received and concerns voiced by a Board member concerning the need to clarify language on sexual contact, the Board decided to rewrite the proposed amendment. Language was revised specifically addressing the time frame requirements as well as the counselor/client contact this regulatory action seeks to change. The Board in conjunction with Counsel, Senior Assistant Attorney General Howard Casway, drafted a rewrite of the proposed language in a fashion that addressed the clarity issues that had been raised. Mr. Casway, using suggestions made by Board members composed the language that was adopted by the Board on July 25, 2003 and is now being submitted as Final Regulations.

It is important to point out that changes made since the issuance of Proposed Regulations did not involve any substantive changes. The Board made these changes to address concerns that proposed language may not have been as clear as all Board members would have liked.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On July 25, 2003, the Board of Social Work adopted final amendments to 18 VAC 140-20-10 et seq., Regulations Governing the Practice of Social Work, for the purpose of clarification and improved consistency with the regulations of other behavioral science boards.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*
- 10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is*

received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.

11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The specific mandate for licensure and regulation of social workers is found in Chapter 37 of Title 54.1:

§ 54.1-3700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Administration" means the process of attaining the objectives of an organization through a system of coordinated and cooperative efforts to make social service programs effective instruments for the amelioration of social conditions and for the solution of social problems.

"Board" means the Board of Social Work.

"Casework" means both direct treatment, with an individual or several individuals, and intervention in the situation on the client's behalf with the objectives of meeting the client's needs, helping the client deal with the problem with which he is confronted, strengthening the client's capacity to function productively, lessening his distress, and enhancing his opportunities and capacities for fulfillment.

"Casework management and supportive services" means assessment of presenting problems and perceived needs, referral services, policy interpretation, data gathering, planning, advocacy, and coordination of services.

"Clinical social worker" means a social worker who, by education and experience, is professionally qualified at the autonomous practice level to provide direct diagnostic, preventive and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

"Consultation and education" means program consultation in social work to agencies, organizations, or community groups; academic programs and other training such as staff

development activities, seminars, and workshops using social work principles and theories of social work education.

"Group work" means helping people, in the realization of their potential for social functioning, through group experiences in which the members are involved with common concerns and in which there is agreement about the group's purpose, function, and structure.

"Planning and community organization" means helping organizations and communities analyze social problems and human needs; planning to assist organizations and communities in organizing for general community development; and improving social conditions through the application of social planning, resource development, advocacy, and social policy formulation.

"Practice of social work" means rendering or offering to render to individuals, families, groups, organizations, governmental units, or the general public service which is guided by special knowledge of social resources, social systems, human capabilities, and the part conscious and unconscious motivation play in determining behavior. Any person regularly employed by a licensed hospital or nursing home who offers or renders such services in connection with his employment in accordance with patient care policies or plans for social services adopted pursuant to applicable regulations when such services do not include group, marital or family therapy, psychosocial treatment or other measures to modify human behavior involving child abuse, newborn intensive care, emotional disorders or similar issues, shall not be deemed to be engaged in the "practice of social work." Subject to the foregoing, the disciplined application of social work values, principles and methods includes, but is not restricted to, casework management and supportive services, casework, group work, planning and community organization, administration, consultation and education, and research.

"Research" means the application of systematic procedures for the purpose of developing, modifying, and expanding knowledge of social work practice which can be communicated and verified.

"Social worker" means a person trained to provide service and action to effect changes in human behavior, emotional responses, and the social conditions by the application of the values, principles, methods, and procedures of the profession of social work.

§ 54.1-3701. Exemption from requirements of licensure.

The requirements for licensure provided for in this chapter shall not be applicable to:

- 1. Persons who render services that are like or similar to those falling within the scope of the classifications or categories in this chapter, so long as the recipients or beneficiaries of such services are not subject to any charge or fee, or any financial requirement, actual or implied, and the person rendering such service is not held out, by himself or otherwise, as a licensed practitioner.*
- 2. The activities or services of a student pursuing a course of study in social work in an institution recognized by the Board for purposes of licensure upon completion of the course of study or under the supervision of a practitioner licensed under this chapter; if such activities or services constitute a part of his course of study and are adequately supervised.*

3. *The activities of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.*
3. *Persons employed as salaried employees or volunteers of the federal government, the Commonwealth, a locality, or of any agency established or funded, in whole or part, by any such governmental entity or of a private, nonprofit organization or agency sponsored or funded, in whole or part, by a community-based citizen group or organization. Any person who renders psychological services, as defined in Chapter 36 (§ 54.1-3600 et seq.) of this title, shall be subject to the requirements of that chapter. Any person who, in addition to the above enumerated employment, engages in an independent private practice shall not be exempt from the requirements for licensure.*
4. *Persons regularly employed by private business firms as personnel managers, deputies or assistants so long as their counseling activities relate only to employees of their employer and in respect to their employment.*

§ 54.1-3702. Administration or prescription of drugs not permitted.

This chapter shall not be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine as defined in Chapter 29 (§ 54.1-2900 et seq.) of this title.

§ 54.1-3703. Board of Social Work; members.

The Board of Social Work shall regulate the practice of social work. The Board shall be composed of seven members, five of whom shall be licensed social workers who have been in active practice of social work for at least five years prior to appointment and two of whom shall be citizen members. The terms of the members of the Board shall be four years.

§ 54.1-3704. Nominations.

Nominations for professional members may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Chapter of the National Association of Social Workers and by the Virginia Society for Clinical Social Work. The Governor may notify such organizations of any professional vacancy other than by expiration. In no case shall the Governor be bound to make any appointment from among the nominees.

§ 54.1-3705. Specific powers and duties of the Board.

In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties:

1. *To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*
2. *To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*
3. *To designate specialties within the profession.*
4. *[Expired.]*

§ 54.1-3706. License required.

In order to engage in the practice of social work, it shall be necessary to hold a license.

§ 54.1-3707. Licenses continued.

All licenses heretofore issued by the Board of Social Work and its predecessors shall continue in effect, and be renewable under this chapter.

§ 54.1-3708. Continuing education requirements.

The Board shall establish in regulations requirements for the continuing education of licensed social workers.

The Board may approve persons who provide continuing education or accredit continuing education programs in order to accomplish the purposes of this section.

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Although the Board has determined that the regulations are generally clear and easily understandable, it has identified areas where unnecessary or outdated language needs to be rescinded, and where new language is needed for clarification or improved consistency with the regulations of other behavioral science boards.

Specifically the Board intends to amend regulation and update the name of an organization that provides vital information to licensees of this profession. In that this organization provides vital information and services to current and potential licensees, this action is essential to protect the health, safety, or welfare of citizens.

Further, the Board intends to amend regulation to provide for a time period after the cessation or termination of professional services that a social worker may not engage in sexual intimacies with a therapy patient, client, or anyone included in collateral therapeutic services. Current language is open-ended and can be construed as never. This amendment is less restrictive than that of Counseling (5 years) and equivalent to that of Psychology. In that the licensee will bear the burden that there was not exploitation, this amendment is essential to protect the health, safety and welfare of citizens.

The Board of Social Work is charged with issuing licenses and regulating the practice of social work. As the regulating agency, the board has the duty to protect the public by establishing qualifications and requirements for licensure that are necessary to ensure the competence and integrity of license holders and by taking disciplinary action for violations to applicable law and regulations. Regulations are the mechanisms by which the board sets forth qualifications and requirements for certification, and standards of professional conduct that provide the basis for disciplinary action. The board considers the problems the regulations are intended to address, and utilizes professional expertise, review of requirements of other states and national associations, historical information and public comment to determine minimal requirements that will ensure competency of its licensees and protect the public health, safety and welfare.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The Board is intends to amend its regulations for the licensure of social workers in order to update and clarify the regulations. The reference to the National Federation of Societies for Clinical Social Work in subsection B of 18 VAC 140-20-105 is outdated and should be changed to the Clinical Social Work Federation.

The Board also intends to amend 18 VAC 140-20-150.9 to include language that will limit to two (2) years the period of time after cessation or termination of professional services that a social worker may not engage in sexual intimacies with a therapy patient, client, or those included in collateral therapeutic services.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1) The primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions:

There are no discernable advantages or disadvantages to the public or to individual private citizens or businesses, of implementing the new or amended provisions.

2) The primary advantages and disadvantages to the agency or the Commonwealth:

Many practitioners hold multiple licenses under the Boards of Social Work, Psychology, and Counseling. Inconsistencies in the ethical standards among these boards sometime result in discrepancies in the level of disciplinary action taken for the same offenses. In the interest of consistency, the Board is recommending language that will allow for more equitable disciplinary action by the agency on behalf of the Commonwealth among the three boards.

There are no discernable disadvantages to the agency or the Commonwealth.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Proposed regulations were published in the Virginia Register of Regulations on February 10, 2003 (Volume 19 Issue 11). Public comment was requested for a 60 day period ending April 11, 2003; during that period one written comment was received. It is summarized as follows:

Ms. Debra Riggs, Executive Director, National Association of Social Workers (NASW), Virginia Chapter provided the following comments:

Regarding new language in #9 of Standards of Practice

NASW VA has some concerns regarding the new language in the proposed regulations. The language defining the time limit may undermine the VBSW authority in that it could be viewed as an arbitrary and capricious time limit. Specifically the following part of the new language:

"... For at least two years after cessation or termination of professional services, licensees shall not engage in sexual intimacies with a therapy client or those included in collateral therapeutic services-..."

The term "therapy client" is not defined elsewhere in the regulations. This could be viewed as arbitrary. Where is the line between a "therapy client" and a "non therapy client", or some other type of client? How would a licensee know which kind of client fit the definition of "therapy client"? Also it seems what you mean to say is a "former therapy client". The phrase "therapy client" seems to indicate a current client.

The more major concern is the "two year" time limit. In a study by Jayarane (1997 Social Work Journal) in a large sample survey of social workers, 95.4 % agree that "having sex with a former client" is inappropriate. Social Work literature seems to support the NASW code of Ethics:

1.09 Sexual Relationships (c) Social workers should not engage in sexual activities or sexual contact with former clients...."

Also in a study by Mattison, Jayaratne, and Croxton (2002 Social Work Journal) found that practitioners differed on the definition of ex-client or former client.

40.9% define former client as "at the time services are terminated"
46.8% define former client as "once a client, always a client"

This shows a wide difference of opinion in the field. The Proposed regulations attempt to deal with this by the language "...after cessation or termination of professional services..." The two year time limit appears to be arbitrary and capricious and open the VBSW up to a weakening of this part of the regulation.

NASW does not want to see the authority of the VBSW weakened in this area.

Board Response: *Based on your comments as well as other issues raised during discussions the Board decided to make revisions to the language before going forward with Final Regulations. Staff will consult with Members, Board Legal Counsel, and the Agency Regulatory Coordinator to revise the proposed language. A copy will be provided to you as soon as an agreeable version is established.*

A Board meeting has been scheduled for 10:00 a.m., July 25, 2003 to address this and other business before the Board. This will be a regular Board meeting open to the general public. As such it has been posted on the Virginia Town Hall Website.

A Public Hearing before the Board was held on February 21, 2003 at which time no comments were made.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 140-20-105. Continued competency requirements for renewal of an active license.

The Board amended this section to reflect an organizational name change of the “National Federation of Societies for Clinical Social Work, Inc.” to the “Clinical Social Work Federation.”

18 VAC 140-20-150. Professional conduct.

The Board amended subsection 9 to include language that will limit to two (2) years the period of time after cessation or termination of professional services that a social worker may not engage in sexual intimacies with a therapy patient, client, or those included in collateral therapeutic services.

Language was added as a caveat specifying that the licensee shall bear the burden of demonstrating that there has been no exploitation regardless of a person’s consent to, initiation of or participation in the sexual contact or conduct of a sexual nature with the practitioner beyond the two-year limitations set out in this proposed regulation.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no impact on disposable family income.